

State Legislators File Amicus Brief in U.S. Supreme Court Supporting Vermont Law Limiting Datamining of Private Prescription Information for Marketing

LEGISLATORS JOIN CONSUMERS, ADVOCATES FOR THE ELDERLY, AND DOCTORS IN FILING SUPREME COURT BRIEFS DEFENDING VERMONT LAW LIMITING DATAMINING IN *IMS v. SORRELL*

FOR IMMEDIATE RELEASE:

March 3, 2011

CONTACT:

Rep. Sharon Treat, NLARx Executive Director

(207)242-8558

streat@reducedrugprices.org

Sean Flynn,

Program on Information Justice & Intellectual Property, Washington College of Law

(202) 274-4157

sflynn@wcl.american.edu

WASHINGTON, D.C. - The National Legislative Association on Prescription Drug Prices (NLARx) has filed an [Amicus brief](#)

(<http://www.reducedrugprices.org/read.asp?news=6136>) in the U.S. Supreme Court supporting the State of Vermont in the case *IMS Health v. Sorrell*. Vermont is defending its right to enact laws regulating the use of data on doctors' and other medical professional's prescribing histories.

"This is an important case with broad implications. It pits privacy, specifically the privacy of health records, against assertions by corporations that they have free speech rights to use private data in marketing activities," said Sharon Treat, NLARx Executive Director. "State legislators have a strong interest in this case for reasons of protecting public health, preserving access to affordable health care, and insuring that private data about health status and diagnosis remains private."

The case, *IMS v. Sorrell*, is an appeal from a Second Circuit Court of Appeals decision overturning Vermont's prescriber confidentiality law on grounds of free speech. Similar laws in

New Hampshire and Maine have been upheld by the First Circuit Court of Appeals as constitutional and within the scope of state authority.

Professor Sean Flynn of the Washington College of Law at American University, is Counsel for NLARx and AARP, which joined in the amicus brief. Professor Flynn argues that the Court should recognize the overriding interests of Vermont and other states in regulating the confidentiality of prescription records. "The Vermont law directly advances its interest in protecting against disclosure of records containing the most personal of information as well as its interest in protecting individual autonomy in decision making on important personal matters," Prof. Flynn stated. "Protecting the confidentiality of records advances important goals of our health system, including combating undue influence of in person pharmaceutical marketing that raises costs and damages public health interests."

The NLARx/AARP Amicus Brief argues that the Supreme Court should refuse to apply the First Amendment to Vermont's Prescription Confidentiality Law based on two essential facts: *First*, the regulation at issue is limited to the commercial use or private-channel distribution of confidential data. It is thus governed by cases of this Court upholding the regulation of uses of information in purely private settings that do not inform or contribute to the public sphere. *Second*, it concerns the regulation of secondary uses of information where the government requires the initial disclosure. It is thus governed by cases in which this Court has affirmed a right of governments to restrict access to government held or mandated information.

In addition to NLARx and AARP, a separate friend of the court brief in support of the Vermont law has been filed on behalf of Public Citizen, the Center for Science in the Public Interest, Consumer Action, Public Good, U.S. PIRG, and New Hampshire PIRG; and another brief has been filed by the New England Journal of Medicine, the Massachusetts Medical Society, the National Physician's Alliance, and the American Medical Students Association. Read the briefs [here](http://www.reducedrugprices.org/read.asp?news=6136) (<http://www.reducedrugprices.org/read.asp?news=6136>).

About the National Legislative Association on Prescription Drug Prices

NLARX is a non-partisan, non-profit organization of state legislators from across the country working to lower prescription drug costs and improve access to affordable medicines. Members include legislators from states in all regions of the country, from New England to Alaska and Hawaii and the District of Columbia. For more information and to sign up for our bi-weekly newsletter, visit our website at www.reducedrugprices.org.